

UNITED STATES DISTRICT COURT
for the

Western District of North Carolina

United States of America)
v.)
BOB CUMMINGS, true name: Ray Anthony Barrett) Case No: 3:98CR00311-001
Date of Previous Judgment: November 21, 2000) USM No: 13823-058
(Use Date of Last Amended Judgment if Applicable)) Keith Stroud
Defendant's Attorney

Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion,

IT IS ORDERED that the motion is:

☒ DENIED. ☐ GRANTED and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of _____ months **is reduced to** _____.

I. COURT DETERMINATION OF GUIDELINE RANGE (Prior to Any Departures)

Previous Offense Level: 41 Amended Offense Level: 41
Criminal History Category: VI Criminal History Category: VI
Previous Guideline Range: 240 to 240 months Amended Guideline Range: 240 to 240 months

II. SENTENCE RELATIVE TO AMENDED GUIDELINE RANGE

- ☐ The reduced sentence is within the amended guideline range.
- ☐ The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.
- ☒ Other (explain): No reduction, as the original sentence in this case was limited to a statutory maximum of 20 years (240 months) by *Apprendi v New Jersey*, which then became the applicable guideline range, per USSG §5G1.1(a). The revised guideline range is similarly limited and the guideline range remains unchanged. As well, Amendment 706 provides no reduction for cocaine base amounts of 4.5 kilograms or more and this case involves over five kilograms of cocaine base.

III. ADDITIONAL COMMENTS

Except as provided above, all provisions of the judgment dated November 21, 2000 shall remain in effect.

IT IS SO ORDERED.

Order Date: February 24, 2009

Effective Date: _____
(if different from order date)



Graham C. Mullen
United States District Judge

